

CALIFORNIA INTEGRATED WASTE MANAGEMENT BOARD

Permitting and Enforcement Meeting
January 7, 1997

AGENDA ITEM 12

ITEM: CONSIDERATION OF THE ADOPTION OF THE NEGATIVE
DECLARATION SCH#96092039 AND THE PROPOSED FINANCIAL
ASSURANCES ENFORCEMENT REGULATIONS FOR SOLID WASTE
LANDFILLS FINANCIAL ASSURANCE VIOLATIONS

I. SUMMARY

An Initial Study and proposed Negative Declaration (Attachment #1) for the approval, adoption and implementation of the Financial Assurances Enforcement Regulations was prepared by Mr. Bill Ishmael of the Board's Environmental Review Section. The public review period was from September 20, 1996 through October 23, 1996.

The proposed Negative Declaration finds that these regulations will not have a significant effect on the environment and that an environmental Impact Report is not required under the provisions of the California Environmental Quality Act of 1970 (as amended).

To help facilitate continued operator compliance with the solid waste landfill financial assurance requirements, staff of the Permitting and Enforcement Division propose implementing the attached regulations.

The Financial Assurances Enforcement procedures, the basis for the attached regulatory package, were disseminated earlier this year on three different occasions. Financial Assurances Section staff received several comments on the procedures from interested parties. Prior to noticing, the proposed regulations were revised to incorporate comments received from local enforcement agencies, facility operators, industry representatives and other interested parties.

The attached regulations (Attachment #2) were distributed to interested parties on September 20, 1996 and published in the California Regulatory Notice Register 96, Volume No. 38-Z. The 45 day comment period for this rulemaking was from September 20, 1996 to November 4, 1996. The scope of this regulatory package is limited to the financial assurance requirements.

The regulations were noticed for an additional 15 day comment period to make public, minor revisions to the proposed regulations. The 15 day comment period was from December 20, 1996 through January 3, 1997.

II. PREVIOUS COMMITTEE ACTION

1. At its November 6, meeting, the Committee directed staff to explore the use of the "inability to pay" factor at other agencies. The Committee forwarded the proposed regulations package to the full Board for consideration without a recommendation.

III. PREVIOUS BOARD ACTION

At the November 20, 1996 Board meeting, the full Board considered whether to keep or delete the "inability to pay" factor in section 22275(b)(2). Following discussion of this issue, the Board voted to delete this factor and directed staff to distribute the revised regulations for an additional 15 day comment period.

IV. OPTIONS FOR THE COMMITTEE

Committee members may decide to:

1. Adopt the Negative Declaration and financial assurances enforcement regulations as recommended by staff.
2. Direct staff to revise the regulations and provide an additional public comment period and re-notice CEQA determination, if necessary.

V. STAFF RECOMMENDATION

Staff recommends the Committee adopt the proposed Negative Declaration and the proposed Financial Assurance Enforcement Regulations as presented in this agenda, and forward to the Board for consideration and adoption.

VI. ANALYSIS

During the initial 45 day comment period, staff received comments from 9 interested parties. Attachment #3 list each commentor, comments, and staff responses.

The proposed regulations were re-noticed for a 15 day period, and sent to the following interested parties:

Calif Trade and Commerce Agency	Norcal Waste Systems
Regional Council of Rural Counties	Kern County, LEA
California Refuse Removal Council	State Analysis
Solid Waste Assoc. of No. America	City of San Diego

Kern County, Public Works
Browning-Ferris Industries
Calif. State Assoc. of Counties
Siskiyou County, Public Works

Ventura County, LEA
WMX Technologies, Inc.
County of San Diego, LEA
City of West Covina, LEA

The official 15 day comment period had not yet ended at the time this package was printed. A list of commentors, comments and staff responses will be provided at the Committee meeting.

Background

There were 9 commentors during the initial 45 day comment period. The comments were addressed and non-substantial changes were made in response to the comments received. The changes to sections 22272, 22273, 22275, 22276 and 22278 clarify regulatory language and require a 15 day noticing of the changes to the proposed regulatory text. The change in section 22275 (b) (2) redefines the factors used to determine a penalty amount.

Board staff requested this issue be brought to the full Board for consideration on whether to keep or delete the "inability to pay" factor in section 22275(b) (2). Following discussion of this issue, the Board voted to delete this factor and directed staff to distribute the revised regulations for an additional 15 day comment period. Changes to the regulations were made, deleting the "inability to pay" factor.

The following changes were made to the proposed regulatory text:

■ *Section 22272 subsection (a) was modified as follows:*

(a) The CIWMB shall send a written Notice of Violation to a ~~facility when~~ an operator violates the requirements of Articles 1, 2, and 3 of Subchapter 2 of this Chapter (commencing with section 22205).

■ *Section 22273 subsection (a) was modified as follows:*

(a) If an operator fails to respond to the Notice of Violation within the specified timeframe, the CIWMB shall draft and send a Notice and Order, as defined in Title 14, California Code of Regulations, section 18304, to the operator, and notify the local enforcement agency of the enforcement action.

- Section 22275 subsection (a)(1) was modified as follows:

1) the economic benefit portion of a penalty, for lack of liability coverage, shall be based on a minimum annual premium for liability insurance, as identified by a CIWMB survey of the insurance industry. The premium is multiplied by the number of years an operator is out of compliance (whole number rounded up to the next whole year if a partial year of noncompliance exists).

- Section 22275 subsections (b)(2) through (7) and (c) was modified as follows:

(b) Determinations of penalty amounts may be modified by the CIWMB for one or more of the following reasons:

1) Evidence that adequate coverage has been subsequently provided, such as bank statements, letter from county treasurer verifying balance of fund, certificate demonstrating adequate coverage, etc.

~~2) Verifiable documentation of inability to pay the penalty has been subsequently provided, such as financial statements, current budget reports, etc.~~

32) Evidence of a payment schedule, if applicable, detailing the operator's good faith efforts has been subsequently provided, such as past deposits to the financial assurance mechanism, etc.

43) An operator's good faith efforts to comply or lack of good faith.

54) An operator's degree of willingness to comply.

65) An operator's history of compliance.

76) Other unique factors such as size of operation, threat to public health and safety and the environment.

(c) Penalties ~~shall~~ may be pursued by the CIWMB administratively or through superior court based on the following criteria:....

- Section 22276 was modified as follows:

Processing and collection of civil penalties shall be made ~~to~~ by the CIWMB as provided in Public Resources Code,

Division 30, Part 5, Article 3 (commencing with section 45010).

- Section 22278 subsection (a)(2) was modified as follows:

(a) If an operator pays an initial penalty but fails to correct the violation pursuant to Notice and Order, or has recurring violations within a three year period from the date of the preceding Notice of Violation:

- 1) the CIWMB may re-initiate the enforcement process;
- 2) the CIWMB may pursue action to revoke a permit, according to Public Resources Code section ~~44306~~ 43300, and/or pursue closure of the facility;...

There has been no change to the effect of the proposed regulations from that stated in the original Notice of Proposed Regulatory Action.

Fiscal Impacts

None.

VI. ATTACHMENTS

1. Negative Declaration State Clearinghouse Number 96092039
2. Financial Assurance Enforcement Regulations
3. Comments and Responses from 45 day Comment Period
4. Resolution #97-29
5. Resolution #97-30

VII. APPROVALS

Prepared By:	<u>Diana Thomas</u>	Phone:	<u>X 4045</u>
Reviewed By:	<u>Garth Adams</u>	Phone:	<u>X 4063</u>
Reviewed By:	<u>Suzanne Hambleton</u>	Phone:	<u>X 4175</u>
Reviewed By:	<u>Dorothy Rice</u>	Phone:	<u>X 2431</u>
Legal Review:	<u>Kathryn J. O'Brien</u>	Date/Time:	<u>12/30/96</u>